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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re K.H., a Person Coming Under the  
Juvenile Court Law.

2d Juv. No. B206595  
(Super. Ct. No. J1252185)  
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD  
WELFARE SERVICES,

and Respondent,

v.

D.H.,

Appellant.

D. H., the father of K. H. (born in 1992), appeals from an order of the juvenile court denying his request for injunctive relief. Appellant sought to prevent Santa Barbara County Child Welfare Services, respondent, from changing the child's placement from the home of her adult half-sister to a foster home. Appellant contends that the juvenile court erroneously considered his request for injunctive relief to be a motion for a change of placement pursuant to section 388 of the Welfare and Institutions Code.<sup>1</sup> In addition, appellant contends that the change of placement was unlawful. We affirm.

<sup>1</sup> Except as otherwise stated, all statutory references are to the Welfare and Institutions Code.

### *Factual and Procedural Background*

On September 10, 2007, a juvenile dependency petition was filed. (§ 300.) The juvenile court ordered that the child be detained in a foster home or the home of a suitable relative. Respondent temporarily placed the child with her half-sister, C. S., who at that time was 21 years old. The child and C.S. have the same mother.

On November 8, 2007, the juvenile court declared the child to be a dependent child and ordered that physical custody be removed from her parents. The court further ordered that the child be placed in the custody of respondent for placement in a foster home or the home of a suitable relative. In the disposition report filed on November 8, 2007, respondent noted that the child was currently placed with C.S.

On September 6, 2007, a criminal records check of C.S. was conducted through the California Law Enforcement Telecommunications System (CLETS). The check failed to disclose that she had a criminal record.

On September 14, 2007, C.S. filled out a document entitled, "Application for Child Placement for Caregivers." In response to a question whether she had been convicted of a crime, she stated that she had been convicted of commercial burglary and had written "a couple [of] bad checks." However, on September 21, 2007, she declared under penalty of perjury that she had never been convicted of a crime.

On September 26, 2007, a fingerprint clearance check (LiveScan) was initiated through the Department of Justice to ensure the accuracy of the CLETS record check. The LiveScan results showed that C.S. had sustained a felony conviction for burglary in April 2005, and a misdemeanor conviction for writing insufficient fund checks in October 2006. She had been placed on supervised probation for the burglary, and the misdemeanor conviction constituted a violation of her probation. Because of her criminal record, the child could not be placed in her home unless a criminal records exemption (exemption) were granted. (§ 361.4, subd. (d)(2).)

C.S. applied to respondent for an exemption. In a letter dated December 18, 2007, respondent denied an exemption because she was still on supervised probation and "there

is not substantial and convincing evidence of rehabilitation to overcome the presumption that the exemption should be denied."

Since an exemption was denied, respondent also denied her "Application for Child Placement for Caregivers." The child was removed from her home and placed elsewhere.

On January 7, 2008, appellant sought injunctive relief "requiring [respondent] to keep K. H. placed with her adult sister." Following a hearing at which witnesses testified, the juvenile court denied the motion.

### *Injunctive Relief*

Appellant contends that the juvenile court erroneously considered his request for injunctive relief to be a section 388 motion for a change of placement. We disagree. Where, as here, the juvenile court's placement order vested custody in the social services agency with discretion to select a suitable placement, a parent's challenge to the agency's placement decision is properly brought under section 388. (*In re Matthew P.* (1999) 71 Cal.App.4th 841, 848-849; see also *In re Stephanie M.* (1994) 7 Cal.4th 295, 316-317 [parent's motion for a change of placement "may be brought pursuant to section 388 at any time after the minor has been declared a dependent child of the juvenile court"].) Appellant cannot circumvent the requirements of section 388 by characterizing his motion as a request for injunctive relief.

Even if the juvenile court had erroneously considered appellant's request for injunctive relief to be a section 388 motion for a change of placement, a reversal would be unwarranted because of his failure to show prejudice. Appellant has not presented any argument establishing his entitlement to injunctive relief.

### *Change of Placement*

Section 361.4, subdivision (d)(2), provides that, if a criminal records check shows that a "person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child may not be placed in the [person's] home, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal

conviction is of such good character as to justify the placement and not present a risk of harm to the child . . . ."

Appellant contends: "The placement of the child with her sister after a clear criminal records check was lawful. The change of placement to a foster home because of the denial of a criminal exemption by [respondent] pursuant to . . . [section] 361.4 many weeks after placement was unlawful." "Section 361.4 does not extend to removal of children from an existing placement."

In support of his contention, appellant cites *Los Angeles County Dept. of Children and Family Services v. Superior Court* (2003) 112 Cal.App.4th 509 (*Family Services*). In this case the children were under a permanent plan of long-term foster care in the home of their aunt, who was their de facto parent. After the children had been placed with the aunt, she was convicted of a criminal offense that would have precluded placement with her initially. The appellate court concluded that, in these circumstances, "section 361.4, subdivision (d)(2) does not deprive the dependency court of discretion to allow a dependent child to remain in his or her placement . . . ." (*Id.*, at p. 513.) "This is because . . . section 361.4 does not apply when the issue is whether a child is to be removed from an existing placement if a criminal records check reveals a conviction occurring after the placement. [Citations.]" (*Id.*, at pp. 519-520.)

*Family Services* is of no assistance to appellant. Unlike the aunt in that case, C. S.'s convictions occurred before the child was placed with her. Furthermore, the child was not under a permanent plan of long term foster care in her home. Instead, respondent had temporarily placed the child with C.S. pending the results of a LiveScan conducted to ensure that she did not have a criminal record.

Section 309, subdivision (d)(3), authorized respondent to terminate the child's placement with C.S. The statute provides that, if a child is approved for placement in a relative's home after the relative has signed a statement that he or she has never been convicted of a crime, the approval may be terminated if the county welfare department subsequently determines that the relative has a criminal record.

In any event, irrespective of sections 361.4 and 309, respondent had discretion to change the child's placement. "The court did not make an ordered placement with [C. S.]. Instead, its order vested custody with [respondent] to select a suitable placement. That order never changed throughout the proceedings. [Respondent] was *always* authorized to exercise its discretion to reassess the suitability of the environment in which it had placed the child and, if deemed unsuitable, move the minor to an improved situation. [Citation.] Nor did the mere passage of time transform the general placement order into some sort of de facto order giving [C. S.] a right to custody or continued placement." (*In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1490.) In view of C. S.'s burglary conviction, recent violation of probation, and false declaration under penalty of perjury that she had never been convicted of a crime, appellant has failed to show that respondent abused its discretion.

*Disposition*

The order denying appellant's request for injunctive relief is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

James E. Herman, Judge  
Superior Court County of Santa Barbara

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Mark Brown, for Appellant.

Dennis A. Marshall, County Counsel, County of Santa Barbara and Toni  
Lorien, Deputy, for Respondent.